Supreme Court, U. S.
FILED
MAR 23 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1304

AMERICAN SEATING COMPANY,
Petitioner,

v.

NATIONAL SEATING COMPANY,
Respondent,

RESPONDENT'S APPENDIX

By: CHARLES B. LYON
MAKY, RENNER, OTTO & BOISSELLE
601 Rockwell Avenue
Cleveland, Ohio 44114
216-621-1113
Attorneys for Respondent

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FILED
NOV 24 1978
JOHN P. HEHMAN, Clerk

Nos. 76-2625 & -2626

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

AMERICAN SEATING COMPANY,

Plaintiff-Appellant
Cross-Appellee

vs

NATIONAL SEATING COMPANY,

Defendant-Appellee
Cross-Appellant

ORDER

Before WEICK and MERRITT, Circuit Judges, and CECIL, Senior Circuit Judge.

No active Judge of this Court having requested that a vote be taken on the suggestion of appellant that its petition for rehearing be heard en banc, said petition for rehearing was referred to the panel.

Upon consideration of the petition for rehearing we are of the view that the issues of this case were adequately treated in our opinion and that there is no merit in the petition for rehearing.

It is therefore ordered that the petition for rehearing be and it is hereby denied.

ENTERED BY ORDER OF THE COURT.

John P. Hehman
Clerk

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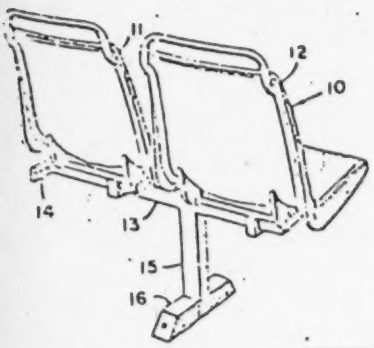
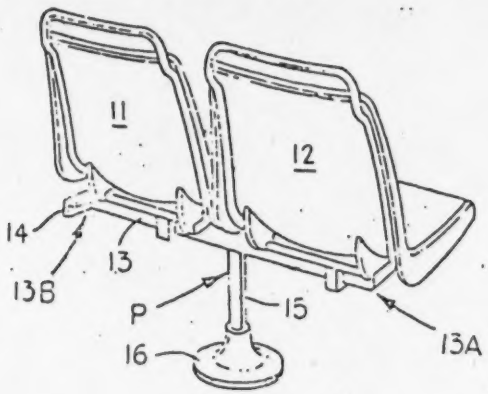
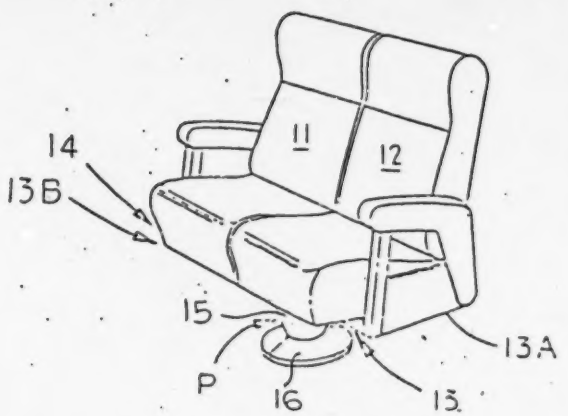


FIGURE 2 OF '226
PATENT FILED IN 1971

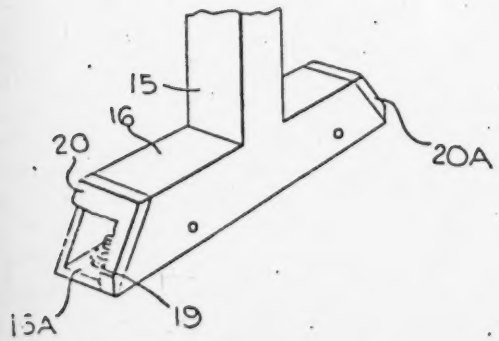


AMERICAN ROUND BASE
CENTER PEDESTAL SEAT (1969)

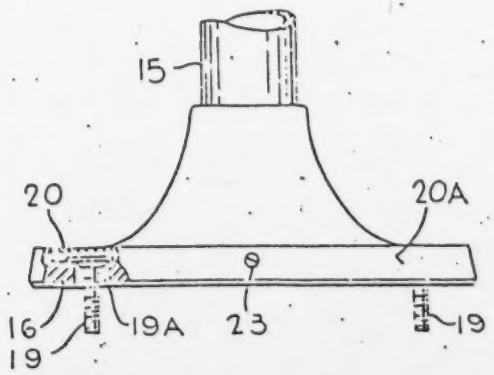


NATIONAL CENTER PEDESTAL TOUR
COACH SEAT (1955-6)

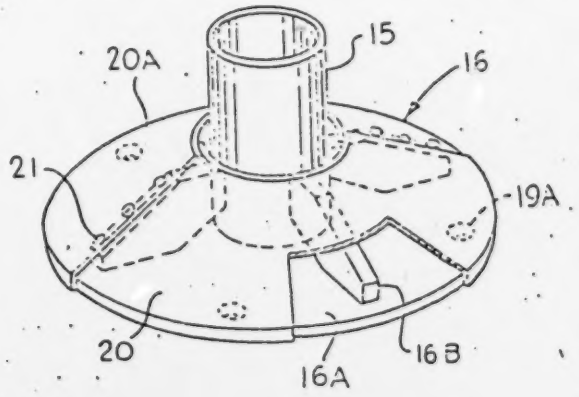
2



DETAIL OF PEDESTAL
FOR '226 PATENT

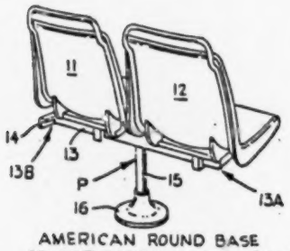


DETAIL OF AMERICAN ROUND
BASE PEDESTAL AND COVER

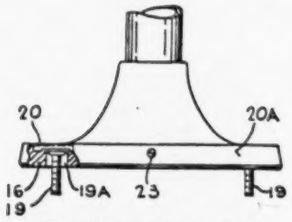


DETAIL OF NATIONAL'S PEDESTAL
FOR TOUR COACH SEAT

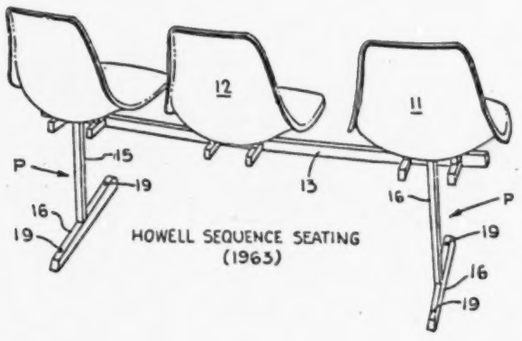
PRIOR ART STRUCTURES



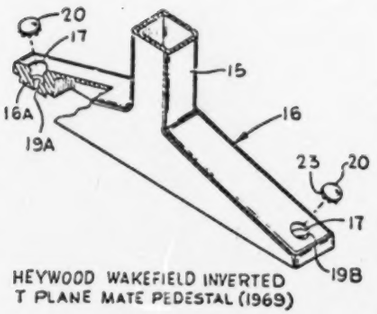
AMERICAN ROUND BASE
CENTER PEDESTAL SEAT (1969)



DETAIL OF AMERICAN ROUND
BASE PEDESTAL AND COVER



HOWELL SEQUENCE SEATING
(1963)



HEYWOOD WAKEFIELD INVERTED
T PLANE MATE PEDESTAL (1969)

AMERICAN SEATING COMPANY V.
NATIONAL SEATING COMPANY
CIVIL ACTION NO. C75-63-A
DEFENDANT'S EXHIBIT 7A

A We go back to the date of the drawing. It was July, 1969.

Q Had American Seating previously mounted seats on beams for theater and lecture room seating?

A May I ask you to restate that question?

MR. LYON: Would you read it back, Mr. Reporter.

(The last question was read back by the reporter.)

A Yes, because this design was taken from a lecture seating.

Q And when you say "this design," you are referring to the beam shown on Defendant's Exhibit "E"?

A Yes.

Q With respect to the pedestal shown on Defendant's Exhibit "E," and specifically the rounded base pedestal, was that pedestal previously used by American Seating for lecture room or auditorium-type seating?

A It was originally designed for a single pedestal chair.

Q When you say "single pedestal chair," what do you mean?

A That only one chair top would be setting on it.

Q And what would be the use of a single pedestal chair?

A The application was for a planetarium seat.

Q Do you recall when that was?

A I can't tell you the date, I do not know. It was prior

299 recollect in my mind what it was.

Q Are you interested in seating when you see seating around, since it is your livelihood?

A I designed the seats, and I usually come up with innovative seats, and I don't look necessarily from that point of view.

Q I show you Defendant's Exhibit VR. Are you familiar with that exhibit?

A Yes. That is the unit I designed.

Q And that is the American Seating which is entitled, "Movable pedestal horizontal seating for 76 series"?

A Right.

Q How long has that type of sequence seating been available from American Seating?

A I don't know.

Q Since prior to 1970?

A Yes. I would say prior to 1970.

Q Did you design this seating for the model, for the '76 series, Defendant's Exhibit VR?

A No.

Q Do you know who did?

A I don't know who it was.

Q Prior to 1970, were you familiar with the inverted T tubular pedestals for tables?

300 A I have seen some, yes.

Q And do you recall whose you saw prior to 1970?

A No, I don't know. I didn't ask whose it was. I just happened to see it.

Q Do you recall where you saw it?

A No, I don't.

Q Handing you a copy of Defendant's Exhibit AT, are you familiar with that?

A Yes. I saw this table.

Q You saw that specific table prior to 1970?

A Yes.

Q And does American Seating have that table?

A No -- I don't know when I saw it.

Q Does American Seating have that table in its possession?

A That, I don't know.

Q And looking at Defendant's Exhibit AT, isn't it true that a tubular T pedestal is disclosed?

A It is a T pedestal, but it is still not the same thing.

Q Isn't it true that it is a tubular T pedestal?

A This is a free standing table. It is not the same.

Q I didn't ask you that. I asked you if it is a tubular T pedestal?

A It is a T pedestal.

Def X 77.744
Bm 9
11-25-75

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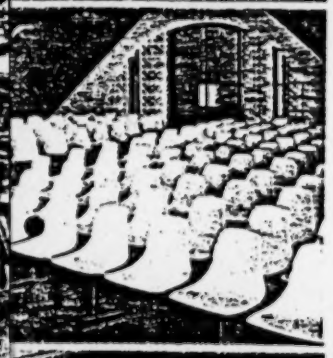

Catalog No. 34
INSTITUTIONAL FURNITURE

From Howell, America's First and Foremost manufacturer of modern metal furniture, this catalog shows the most comprehensive selection ever offered — here you will find fine quality modern furniture for furnishing and refurnishing.

SCHOOLS · HOSPITALS
OFFICES · HOTELS
AIR TERMINALS · BANKS
MOTELS · LIBRARIES
INSTITUTIONS · STORES
CLINICS · RESTAURANTS
WAITING ROOMS
CLUBS · CAFETERIAS
DINING ROOMS
COLLEGES · CHURCHES

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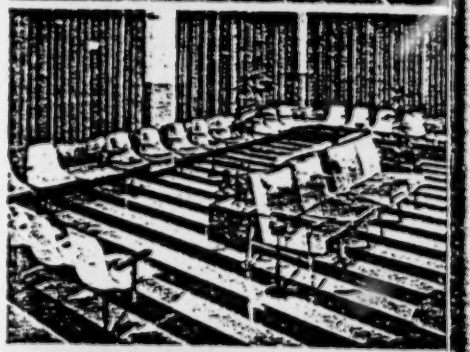
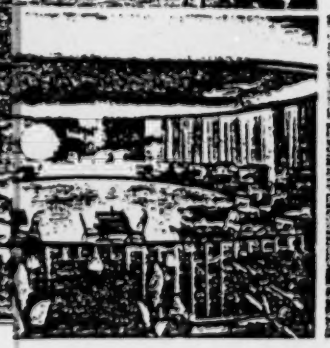
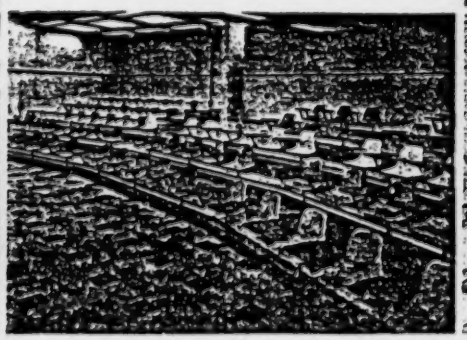
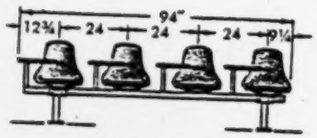






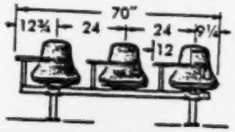
"SEQUENCE" TABLET-ARM SEATING



RT-UNIT
4 Passenger Starter Unit

Includes 4 Howeltex textured fiberglass seats — No. T712 Satin Chrome, or No. T718 Bronzite
And
One Frame Assembly

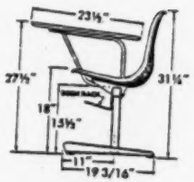
No. T492 free standing leg - Satin Chrome
OR
No. T498 free standing leg - Bronzite



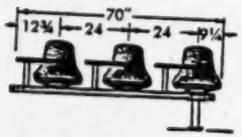
ST-UNIT
3 Passenger Starter Unit

Includes 3 Howeltex textured fiberglass seats — No. T712 Satin Chrome, or No. T718 Bronzite
And
One Frame Assembly

No. T392 free standing leg - Satin Chrome
OR
No. T398 free standing leg - Bronzite



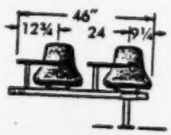
SIDE ELEVATION



UT-UNIT
3 Passenger Add-On Unit

Includes 3 Howeltex textured fiberglass seats — No. T712 Satin Chrome, or No. T718 Bronzite
And
One Frame Assembly

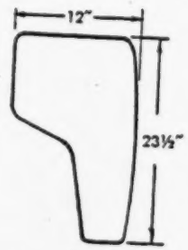
No. T592 free standing leg - Satin Chrome
OR
No. T598 free standing leg - Bronzite



TT-UNIT
2 Passenger Add-On Unit

Includes 2 Howeltex textured fiberglass seats — No. T712 Satin Chrome, or No. T728 Bronzite
And
One Frame Assembly

No. T292 free standing leg - Satin Chrome
OR
No. T298 free standing leg - Bronzite

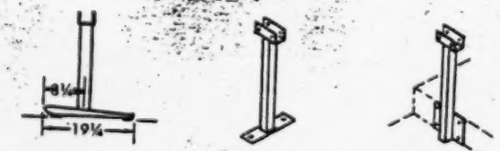


ARM DETAIL

Imperial Walnut laminated plastic surface.

NOTE:
Left hand units may be obtained. Contact factory for information.

LEG DETAIL



FREE STANDING

FLOOR MOUNT

RISER MOUNT

(Supplied only after factory approval of architectural specifications.)

OPTIONAL BOOK RACK
No. M912 Satin Chrome

SEAT COLORS: T712 or T718 seat is available in choice of Howeltex textured fiberglass colors shown on page 22 in this catalog.

and Las Vegas.

Q And is the tour coach type of pedestal and seat of the tour coach variety made by National Seating installed in the Greyhound bus shown on the top of Defendant's Exhibit SQ?

A Yes; shown in the upper right-hand corner of SZ.

Q Have you had a chance to read and are you familiar with the Barecki patent in suit?

A Yes.

Q Is there anything in the Barecki patent in suit that you could compare to the upright 15 in the tour coach pedestal?

A 15 -- the column upright here compares to the 15 operating column on SZ.

Q And why do you say that?

A They are both upright columns, and they support the seat.

Q With respect to the plates 16-A on the tour coach pedestal shown on Defendant's Exhibit SZ, is there any comparison you could make between that and anything in the Barecki patent, Plaintiff's Exhibit 170?

A In the bottom of the foot on 170 there is a flat supporting plate, and the one on 16-A of SZ is a flat supporting plate.

Q What functions are those flat supporting plates providing from both Defendant's Exhibit SZ and 170?
A They fasten the seat to the floor and transmit the loads from the seat to the floor.
Q One plate, 16-A, is round; whereas, the plate, 16-A in the Barecki patent, Plaintiff's Exhibit 170, is rectangular. Does that make any difference, sir?
A Not for the function it does.
Q Why not?
A They both transmit the load on the floor, and they both screw the bolt of the seat to the floor.
Q Why was the base plate 16-A in the tour coach pedestal round?
A Because the same pedestal was used for some of the revolving chairs, and every direction the chair turned the pedestal was still the same.
Q Why were the pedestals positioned where they were relative to the seats other than at the center or mid-passenger position in the tour coach?
A That is where the coach -- built the structure in the coach to take the seat mountings.
Q And with respect to the four holes 19-A provided in the tour coach pedestal, why were they provided where

they were?
A Because the revolving seats were turned around so the loads could be distributed equally around the pedestal.
Q What was the mounting pattern provided in the tour coach for the seats?
A Well, they had plates in the floor to mount these on, so the areas in the floor -- there were four bolts rather than two.
Q With respect to the gussets 16-B in Defendant's Exhibit SZ as used on the tour coach, can any comparison be made between that structure and any structure in Plaintiff's Exhibit 170?
A Well, basically the gusset 16-B in SZ does the same function as the sidewall of the tube in the front of 16.
Q What is your basis for saying that?
A They both transmit the loads from the center pedestal vertical column to the floor mounting holes.
Q What function if any do those plates have relative to the floor plates itself, 16-A, in both?
A They also support the cover and transmit the vertical loads, the bending loads off the plate.
Q Now, with respect to the covers 20 shown on the tour coach pedestal, Defendant's Exhibit SZ, can that be

compared to any structure in the Barecki patent, Plaintiff's Exhibit 170?

A Well, the covers 20 are equivalent to the cover 20 on the Barecki patent.

Q Why do you say that?

A They both cover the bolts and conceal the fastener and prevent the moisture and dirt from accumulating around the bolts.

Q Now, with respect to the position of the pedestal in the tour coach, Defendant's Exhibit SZ, did that provide an aisle that was free of legs?

A Yes.

Q Did that provide an aisle that had a nice clean appearance when you looked down it?

A Yes.

Q Did the pedestal that is positioned in the tour coach of Defendant's Exhibit SZ also provide more leg room?

A Yes.

MR. HENEVELD: Objection; leading.

THE COURT: Overruled. The answer shall remain.

Q With respect to Defendant's Exhibit SZ, is there any comparison you can make between that and Plaintiff's Exhibit 170 with respect to cleaning and maintenance?

CUSHION AND BACK

Vinyl-covered cushion is of coil spring construction with polyurethane padding; optional full-depth polyurethane Amerfoam®. Spring clips attach cushion to seat frame. Cushion upholstery can be simply removed for ease of cover replacement./ Vinyl upholstered Amerfoam® back pad optionally bucketed and/or divided, is attached to plywood inner panel, with outer back panel of anodized patterned aluminum. Outer panel perimeter is hemmed to eliminate cutting hazards. / Vinyl upholstery available in wide range of colors suitable for today's coach interiors.

FRAME

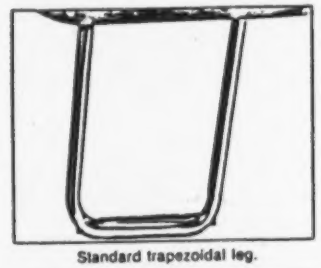
Frame structure is 1" O.D. 16 gauge carbon steel with internal electrunite reinforcement (alternate 1" O.D. 18 gauge stainless steel). Trapezoidal leg or aisle legs of carbon steel tubing with die formed footpads./ Grabrail is stainless steel 1" tubing./ Portions of frame that are not stainless steel are finished in oven-baked enamel./ The passenger seat frame and its supporting structure are constructed and mounted in such a manner that sweeping and cleaning is reduced to a minimum. Special attention has been given to elimination of dirt-catching pockets.

With optional inverted "T" pedestal. Single inverted "T" pedestal of 2" square 14 gauge carbon steel is anchored to the floor in a concealed manner.

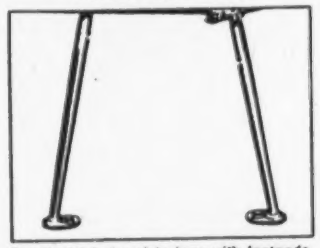
With optional round flared pedestal. Single round flared pedestal of ductile iron with stainless steel cover plates is anchored to the floor in a concealed manner.

Dimensions, options and materials subject to change without notice.

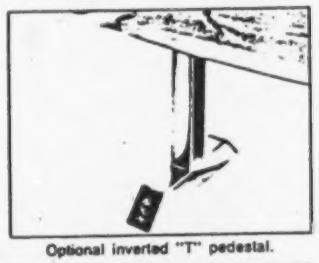
TRANSIT SEAT Model 6426 CONSTRUCTION DETAILS AND FEATURES



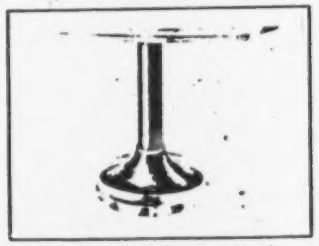
Standard trapezoidal leg.



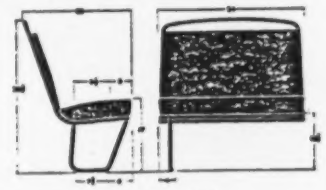
Standard tubular aisle legs with footpads.



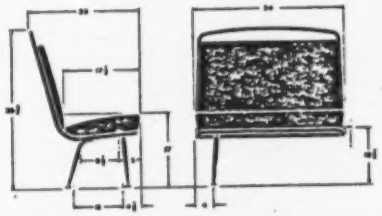
Optional inverted "T" pedestal.



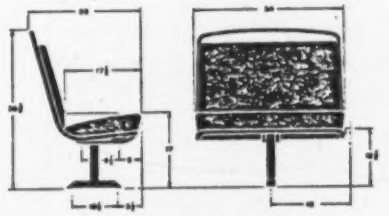
Optional round flared pedestal.



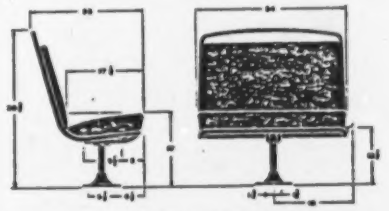
Model 6426 Seat



Model 6426 Seat



Model 6426T Seat



Model 6426R Seat

for the Environment of Excellence AMERICAN SEATING

GRAND RAPIDS, MICHIGAN 49504

Form No. 8120-13

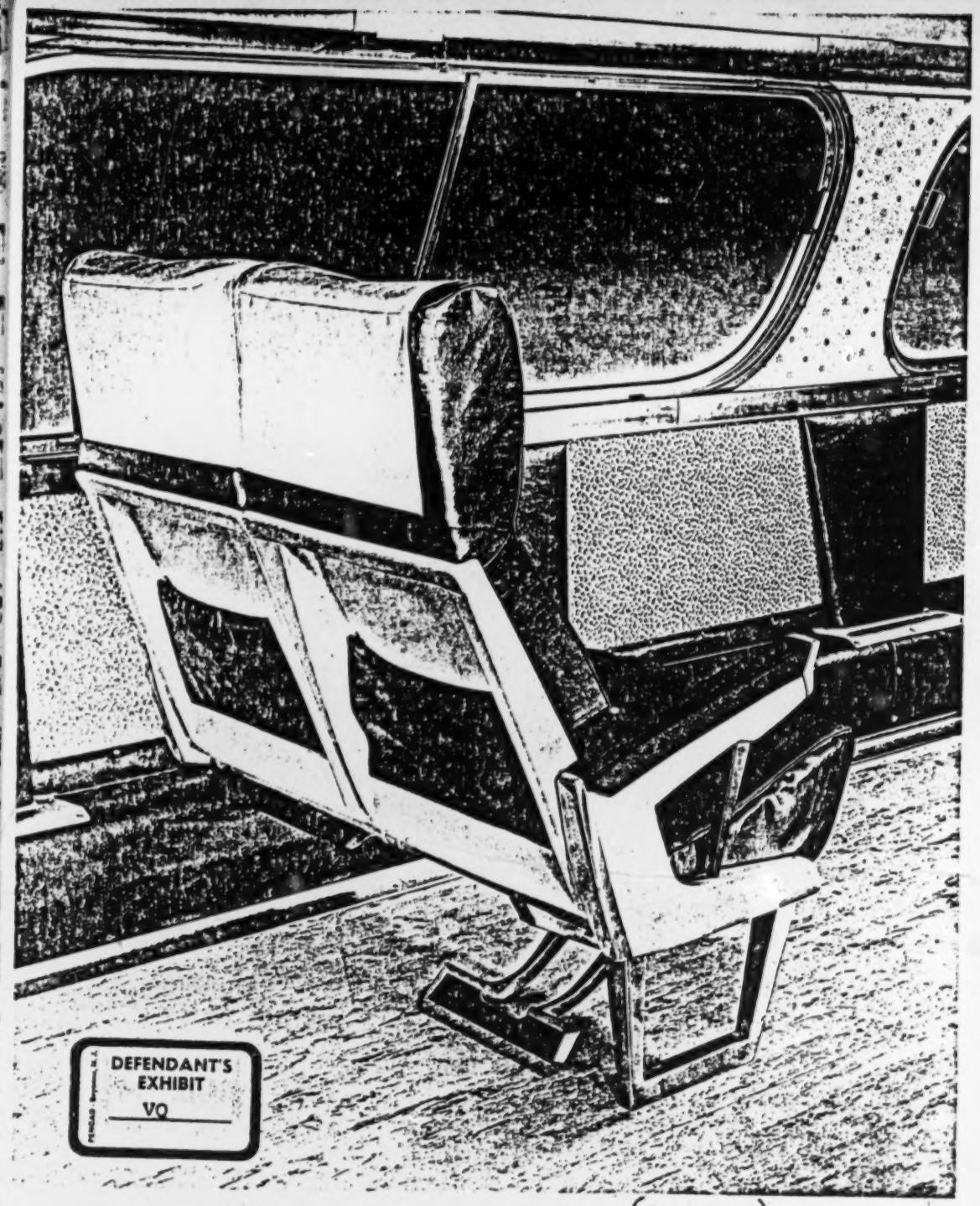
Litho in U.S.A.

Further, this is accomplished with a central pedestal, as distinguished from front and rear legs as shown in Barecki patent 3,383,835 (which is not, of course, a semi-cantilever construction) or an elongated mounting extending front to rear such as shown in the embodiment of FIGS. 4 and 5 of the Davis, et al reference.

The advantages of such a construction are apparent: ingress and egress of passengers in both seats is greatly facilitated. Seating comfort is enhanced because of the greater leg room and lack of obstruction, additional space is provided for storage of bulky objects, the aisle is free of foot obstruction, the appearance of the vehicle looking down the aisle is enhanced, etc.

At the same time, even though there are substantial advantages, there are difficult engineering problems faced. The weight of the passenger sitting in the aisle-side seat must be supported in fully cantilever fashion. This weight not only tends to bend the front and rear stretchers, but it has a tendency to bend the back frame portion if it is integral with the seat frame (which it is), and it has a tendency to twist the seat frame because a torque is applied to the front and rear stretchers.

In order to overcome these stresses, the present invention provides a combination which includes the following elements: cross frame members 25 are connected at laterally spaced central positions between the front and rear stretchers to resist parallelogram twisting forces. Further, these



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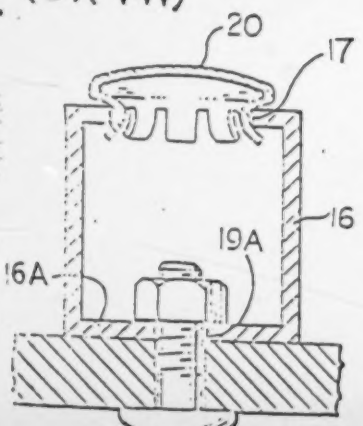
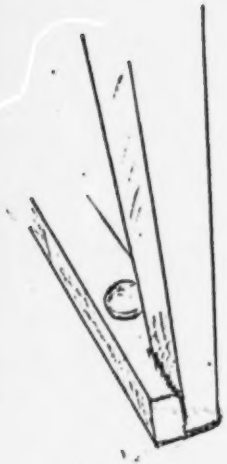


AMERICAN SEATING COMPANY V.
NATIONAL SEATING COMPANY

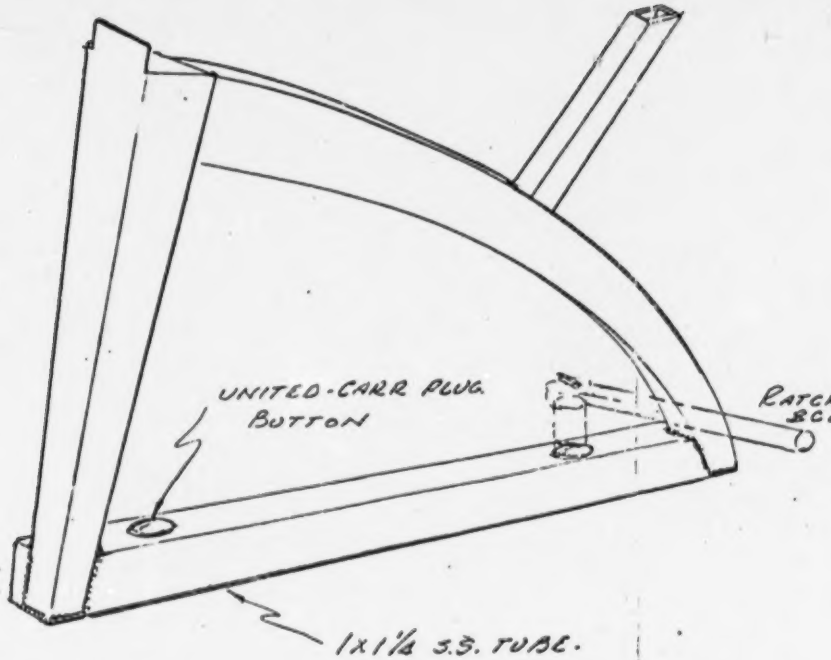
CIVIL ACTION NO. C75-63-A

DEFENDANT'S EXHIBIT FJ

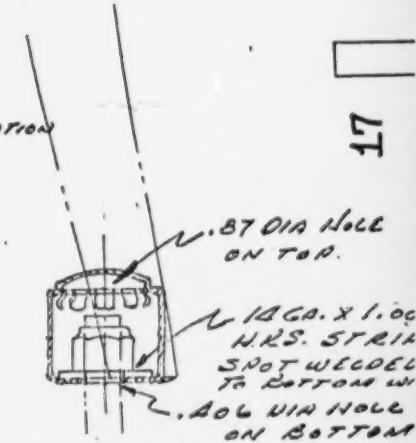
17



INSIDE VIEW
LEG & CROSS RAIL JOINT
TYPICAL FRONT & REAR
RAIL & LEG WELDED ALL
AROUND - GROUND FLUSH.



AISLE SIDE VIEW OF LEG



TYPICAL SECTION
THRU BOLT HOLES.

ITEM	PART NO.	DESCRIPTION
		PARTS LIST

SYM	CHANGE	DATE	BY	NEXT ASSEMBLY

TOLERANCES
DECIMALS FRACTIONS
.X = ±.1 ±1/16
.XX = ±.03 ANGULAR
.XXX = ±.010 ±1°30'

SCALE —
DATE 7-11-67
DRAWN
CHECK

DO NOT SCALE

TITLE PROPOSED AISLE LEG GH.

PART NO. SK322

NATIONAL SEATING CO. MANSFIELD, OHIO

which supports the seat in the wall side of the seat, so it sets level.

Q Now, with respect to looking at the seat pictured in Defendant's Exhibit DJ, does it appear that the top caps that are 20 in your sketch are on that?

A No.

MR. HENEVELD: Objection. It is leading.

THE COURT: It is leading. The answer shall remain though.

Q How can you tell that?

A You can see the slots with the screw bolts in.

Q Now, was the seat of the type Defendant's Exhibit VQ ever made by National Seating on a commercial production type basis?

A Not the one that is on VQ, no.

Q Why not, sir?

A Because this was the prototype, and the final production ended up with a die casting pedestal.

Q Why was that?

A Economics.

Q And why, if you recall, would it be economical to do it one way than the other?

A Well, stainless steel is a lot more expensive than aluminum die casting.

MR. LYON: Are you instructing him not to answer?

MR. HENEVELD: No, that is the objection.

MR. LYON: Would you answer the question, please?

A I am assuming it is a standard GM fastener.

Q You did testify, did you not, that this is a picture of a National Seating transit seat that you recall them making?

A Yes.

Q And you did testify, did you not, that what is pictured in Defendant's Exhibit "DG" and "DH" was a picture of those National Seating transit seats in a bus?

A Coach interior.

Q Did you ever personally see the transit seats pictured in Defendant's Exhibit "DG"?

A Actual seats? Not that I recall.

Q I will hand you now what I have just had marked as Defendant's Exhibit "DJ," and ask if you can identify that?

A This is a brochure on the model 1020 National seat.

Q How can you be so sure that it is the 1020 National seat

A It is identified as such.

Q Do you recall ever having seen the 1020 seat as it is pictured in that particular exhibit?

A No, I don't.

Q With respect to Defendant's Exhibit "DJ," do you have any idea or recollection as to how that particular brochure got into the competitors file that is entitled "National Seating Company"?

A I don't know, other than my predecessor's name is on it.

Q Do you have any recollection of having seen that brochure, Defendant's Exhibit "DJ," prior to today?

A Yes.

Q Do you recall when you saw it?

A Not specifically, sometime in the past.

Q Prior to 1970 did you see this brochure, Defendant's Exhibit "DJ"?

A I may have.

Q Are there other identical brochures to Defendant's Exhibit "DJ" in the competitors file entitled National Seating?

A Do you want me to go through them?

Q Yes.

A There is a total of three.

Q The other two are identical in all respects to Defendant's Exhibit "DJ"?

A The brochures appear to be.

Q Is there a date stamp appearing on any of the three brochures, Defendant's Exhibit "DJ"?

A There are no date stamps.

(Defendant's Exhibit DK was marked by the reporter.)

Q I will hand you what has been marked as Defendant's Exhibit "DK," could you identify that for me, please?

A It is a National Seating seat catalogue. It appears to be their line of seats for that particular year.

Q Is there a date appearing in that catalogue to indicate what year the models are for National Seating?

A There is a title page that states the "Presents" for 1965.

Q Can you tell from that brochure, Defendant's Exhibit "DK," when it was received by American Seating Company?

A No, I can not.

Q Referring to the first couple of pages in that brochure, are you familiar with the model number 1029 pictured in Defendant's Exhibit "DK"?

A I recognize it as a National seat.

Q Do you recognize the leg structure pictured in the

pedestals.

Q And this was during a period of what? -- 1969? Did you begin as early as 1969?

A No. It was basically done in the middle of 1970. That is when I had the request the first time to think about a seat with a center pedestal under the chair.

Q And from this time, from 1970 until 1972, when you actually put out a model, you had many attempts to design a center pedestal; is that correct?

A No. There wasn't many attempts. I was just making -- but that wouldn't be economical to manufacture, and there was never any definite manufacturing decision to go that way.

Q The economics are an important factor in the building of transit seats?

A Very much so.

Q Why is that?

A Well, everything is built against a price.

Q So in some instances you may have a pretty good design, but you can't manufacture it because it is too costly; is that correct?

A Right.

Q And you are always searching for better designs but within the cost parameters?

A Right.

Q And that is what you were doing during 1970 to 1972; is that correct?

A Off and on, yes.

Q And finally you found one, didn't you?

A Oh, we finally settled on one, yes.

Q What was that?

A That was the tubular columns copied from the Mitchell table.

Q Like that shown in this courtroom which has been identified as Defendant's Exhibit SY?

A That was the final version of it, yes.

Q What are the dates of CF-1 to -25?

A They run from June, 1970, and I am not quite sure when the other ones are. They all run approximately within a month of one another.

Q And you say that you completed your present design sometime in September, 1972?

A Right.

Q And that is two years ago and three months; isn't it?

A I suppose so.

Q All this time you have been looking for a design that you can make at a price that you can sell?

A No. This project was brought up and started by

management and stopped by management, and I went on to other things, and management would bring it up again and drop it again and bring it up again and drop it again.

Q And the last time it was dropped -- it was started up was because of one reason?

A I don't know why it was started up again. I had the request to make the seats for NAMBO, so that is what I made -- with center pedestals.

Q You didn't know anything about American Seating even having a center pedestal?

A No, I did not.

Q In fact I think you testified that you didn't even really have any goal in mind except to get a center pedestal period; is that all?

A Basically my request -- the request I had was to produce a seat with a center pedestal, and that is all I had to worry about.

Q You don't recall the person who gave you the spark?

A No, sir, I do not.

Q That is what it was, wasn't it, the "spark" that caused you to think of using an inverted T?

A The T pedestal, the Mitchell table, had been around for 10 years, and I had seen it and really not paid

that much attention to it in relation to this seat until such time as somebody made a remark, why didn't they do anything like this, that they made a cheap pedestal, so that is what I did.

Q Answer the question. That is the spark that started you off?

A If you want to refer to it as that, yes.

Q Now, could you draw on the board here where that Mitchell table is located?

A Our department is like this. This is the Sales Office and this is Engineering (indicating).

Q Why not draw it first, and then you can testify about it.

A O.K. Let's see. The Mitchell table sits right here along this wall (indicating), and this is the drafting department, and these are offices, and these are offices along here, and our department is over in here (indicating).

Q Now, that is the outline of the portion of your offices, the engineering offices?

A Yes.

Q Now, would you state where the entrance to the building is.

A The entrance to the building is over here (indicating).

upright, the chair frame, and the seat, completed by National Seating?

A Yes; it was ready to go for the show.

Q During the design and development of the seat shown on Defendant's Exhibit BK were you aware of an American Seating seat with a pedestal?

A No.

Q During the design and development of the seat shown on Defendant's Exhibit BK had you seen any advertisement of American Seating with respect to a pedestal?

A No.

Q I show you Plaintiff's Exhibit 63, including two documents. Would you review those, sir.

(After an interval.)

A Yes.

Q During the design and development of what is shown on Defendant's Exhibit BK did you see Plaintiff's Exhibit 63?

A No.

Q During the design and development of what is shown on Defendant's Exhibit BK were you told by anybody at National Seating about an American Seating seat with a pedestal?

A No.

Q During the design and development of what is shown on Defendant's Exhibit BK were you told anything about an American Seating seat with a pedestal by somebody outside of National Seating?

A No.

Q During the design and development of the pedestal as shown in Defendant's Exhibit BK have you ever seen an actual seating drawing with a seat pedestal?

A No.

Q During the design and development of the seat shown on Defendant's Exhibit BK were you ever told what kind of a profile to make for the pedestal?

A No.

Q Were you ever told what the construction of the pedestal was to be?

A No.

Q During the design and development of what is shown on Defendant's Exhibit BK had you seen an actual product of American Seating with a pedestal?

A No.

Q Did you in any way, shape, manner, or form, during the design and development of what is shown on Defendant's Exhibit BK, copy an American Seating

product with a pedestal?

A No.

Q Then how did you design the pedestal?

A I just used the logical program of engineering. It was just that they wanted a very simple pedestal, and this is what came of it.

Q With respect to that pedestal as shown on Defendant's Exhibit BK, did you think you had developed anything new?

A No.

Q Why not?

A Because it is a very common application of legs as shown by the Mitchell table.

Q I hand you Plaintiff's Exhibit 6 and Defendant's Exhibit BM. First, could you tell me what Defendant's Exhibit BM is?

A Defendant's Exhibit BM is the engineering assembly drawing, the pedestal itself.

Q Is this the pedestal now being manufactured by National Seating Company?

A Yes.

Q And in the context of Defendant's Exhibit BM and Plaintiff's Exhibit 6, could you describe please the construction of that pedestal.

with pedestal, did the Mitchell Manufacturing table ever come up?

A Yes. During the time that the pedestal was in the design stage -- and I was getting kind of fed up with some of the complaints about the different designs I had made, because I don't have the final say on any of the designing of it -- the Mitchell table -- somebody made a crack that, "Why don't you make a pedestal like on the Mitchell table in there."

Q Now, was there actually a table in National Seating's possession?

A Yes. We have a reference table in the Engineering Department that is a Mitchell table.

Q And approximately, sir, how long has that table been in National Seating's possession?

A It has been in the Engineering Department four or five years, and it probably has been in National Seating for 10 years.

Q Now, with respect to what is shown in Defendant's Exhibit AT, does that accurately reflect the type of table that was in the possession of the Engineering Department?

A Yes. That is the Mitchell table. It is the patent drawing.

Q Referring to the bottom sketch of Defendant's Exhibit SZ, could you describe for me what that is, sir?

A Well, the Mitchell table has a vertical column, Item 15, and the foot which is Item 16, and a cap on the end, which is Item 20.

Q What is the cross sectional shape of the upright 15 and the foot 16?

A They are both rectangular

Q What is the cross sectional shape of those two?

A They form a T.

Q What is the cross section of the member itself?

A They were rectangular -- tubular.

Q With respect to what is shown as 20 on the bottom of Defendant's Exhibit SZ, what is that little plastic end cap that is shown off the end of the tube? How is that held in place?

A With a screw. There is a hole in the bottom of the cap, a countersunk hole, and screws through the 19-A hole.

Q When you say you refer to the Mitchell table, what did you do then?

A Went back and did a little thinking about it, the loading, and so forth, and went out to the shop to see if I could find some tubing about the size we

would need to produce it for the loads that were involved, and I found a piece of 2-inch square carbon steel tubing that I brought back and built up some samples out of.

Q How would the Mitchell table with its support form relate in any way to the transportation seat?

A It would be the same. It transmitted the load that is on the top to the bottom of the floor.

Q Do you remember who mentioned the Mitchell table to you?

A I haven't the slightest idea. I inquired, but I haven't been able to find anybody that knows about it.

Q Referring to Defendant's Exhibit CG, can you tell me what that is?

A Those are photographs taken of the actual Mitchell table.

Q Are those photographs taken at National Seating?

A These were taken at National Seating.

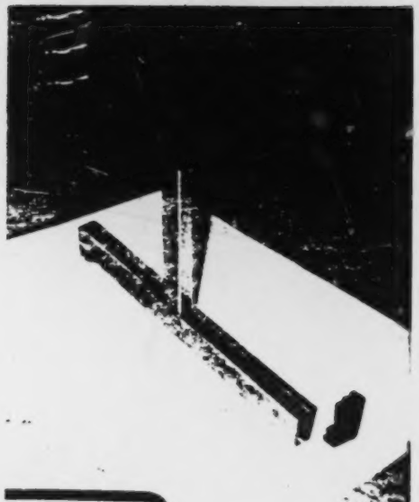
Q Were they taken of the actual table that you reviewed?

A Yes.

Q I refer you now to Defendant's Exhibit BK. Can you tell me what that is, sir?

A That is the engineering layout of the final location of the seat pedestal on the 1070 chair.

PLAINTIFF'S EXHIBIT



AINTIFF'S EXHIBIT

PLAINTIFF'S

32

United States Patent Office

Des. 198,218
Patented May 19, 1964

198,218

TABLE

Robert O. Blink, Milwaukee, Wis., assignor to Mitchell Manufacturing Company, Milwaukee, Wisc, a corporation of Wisconsin

Filed Dec. 5, 1963, Ser. No. 77,685

Term of patent 7 years

(Cl. D33—14)

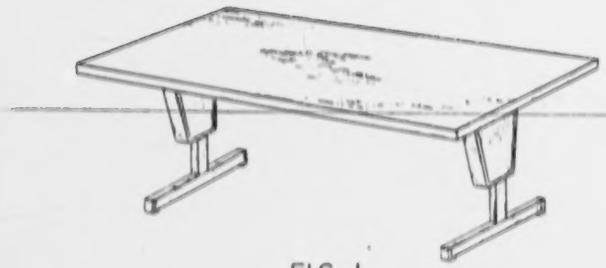


FIG. 1

FIG. 2

FIG. 1 is a perspective view of a table showing my new design; and

FIG. 2 is an elevational view of one of the two identical ends.

I claim:

The ornamental design for a table, substantially as shown.

References Cited in the file of this patent

UNITED STATES PATENTS

D. 196,593 Walz ..... Oct. 15, 1963

OTHER REFERENCES

Office Appliances, September 1959, page 189, left center table, Barricks adv.

33

the Depression of the early '30's.

Q What was your major?

A Business Administration.

Q Did you graduate?

A No, sir.

Q What did you do upon leaving Penn State?

A I went to work for the Liquor Control Board of the State of Pennsylvania for 10 years.

Q What did you do then?

A Then I went to work with Heywood-Wakefield Company in the early '40's.

Q Can you tell me what the Heywood-Wakefield Company is and what they do?

A Well, the Heywood-Wakefield Company is a manufacturer of household furniture and public seating furniture and transportation type seating furniture, and I guess that pretty much covers the scope of their manufacturing.

Q What were your responsibilities with Heywood-Wakefield over the years, just briefly?

A I began with them as an Inspector and went up through Project Engineer in Specialty Products, and from there as Assistant Sales Manager for the Transportation Seating Division, and then to Sales Manager, and then

that is round (indicating), but outside of that, I can't see any variation.

Q With respect to your tenure at Heywood-Wakefield Company and the various positions that you held, what does the term "transit" mean?

A Well, transit has to do with the transportation of passengers in urban areas; in other words, no long hauls -- short runs; and it primarily included a more austere type seating that you would not find in the longer run buses; that is, straight backs and closer centers, and probably as much as 10 percent more seating in the vehicle than there would be in the other type.

Q Were they generally fixed back seats that were referred to as transit seats?

A Yes.

Q Were you at all involved in a project called the Plain-Mate Seat?

A Yes.

Q And can you tell me, sir, what your involvement was in that particular program?

A Well, I believe this was in early '68, that the Budd Company contacted me and said that they had plans to develop what was previously their mobile lounge that

they had provided to the Dullis Airport some five or six years ago, and they were interested in building another vehicle which was less costly and would accomplish the same end, and would we be interested in working with them on seating, which we did, and spent a better part of a year designing the seats and working out with their Engineering Division to accomplish that end.

Q What was your specific function in the Plane-Mate Project?

A I was selling the seats to them.

Q Where were you residing at that time?

A In Newport, Tennessee.

Q What company was responsible for designing the seats and the pedestals that went into the Plane-Mate Mobile Lounge?

A Heywood-Wakefield Company.

Q I refer you to Defendant's Exhibit RX. Could you tell me what that document is, please.

A That was a preliminary design of a pedestal. We worked on a number of different designs because we were withheld to both weight and cost in this, and we were attempting to get the cheapest -- maybe "the most economical" is a better way to put it -- and the

lightest type seat that we could.

Q Now, would you just refer briefly to Defendant's Exhibit RX and describe the overall structure involved in that drawing.

A Well, it is tubular frame construction where the passenger sets with a urethane cushion in back, and both are fixed, and there is a boxlike structure which holds the frames, and they are supported at various intervals with pedestals which are bolted to the floor of the bus, as they called the vehicle.

Q And when you say "boxlike structure supporting the seats," can you show me what you are referring to?

A Right there (indicating).

Q Right here (indicating)?

A Yes.

Q And is that also shown in the front view?

A Yes, it is. It is a welded structure. It is a channel.

Q And what is the date on that drawing?

A April 1st, 1969.

Q Is the dating system on the drawing different than what we commonly use in the United States?

A Yes. The Canadians reverse their dating system.

Q Now, with respect to the drawing, Defendant's Exhibit RX, what was done with that in terms of the Budd

Company and Heywood-Wakefield's interest -- involvement?

A You mean this particular pedestal?

Q Yes.

A Well, it was discarded as far as I recall.

Q What was the reason?

A Because of the weight factor. Well, that was one factor. Probably the greatest -- I am not sure about the cost situation -- but I am sure the weight factor was the greatest factor, and for that reason we went into another pedestal. This was still this construction.

Q Was the structure above the pedestal as shown in Defendant's Exhibit RX pretty much adopted as shown there?

A As far as I can see, it is exactly what they used.

Q I refer you now to Defendant's Exhibit CM. Can you tell me what that is, sir?

A That is the pedestal that is now being used, or was being used when I was involved with it, with the Plain-Mate program.

Q What is the date on that particular drawing?

A The original drawing date appears to be 6-6-69, and revised to be brought up to date to reduce weight

12-2-69 -- I get confused with these dates.

Q Now, with respect to the drawing, Defendant's Exhibit CM, could you describe for me just generally what the structure is that is disclosed on that drawing?

A Well, it is a match metal mold, aluminum casting with feet and a rectangular upright which supports the pads on the top which holds the box section of the seat on the passenger seats.

The feet have two tabs at either end which are drilled out to accept bolts which go through to the floor, and they are faced off here (indicating) to be at both ends here (indicating), to give you a flat seat on this floor of the vehicle.

Q Where were the fasteners for the floor actually received in the two ends? Could you show that to me?

A They go down through this aperture, and from this aperture down into the floor, and attached to the hatch section.

Q Where is the head of the fastener received?

A Down through, underneath the section here (indicating) so that it does not protrude.

Q And are those fasteners in any way covered?

A Yes. There is a little gimmick that goes in the top that completely encloses the situation.

Q Is that what is spelled out in the lower right-hand corner?

A That is right. That is a small drawing which apparently you don't have, but that is a drawing because it is an S. drawing, and that is a small drawing.

Q I refer you to Defendant's Exhibit CN. Can you tell me what that is?

A Well, that is the plug with this little fastener that fits in there and becomes tight and holds tight into the vehicle.

Q And where does this plug go, and what is its purpose?

A It goes down into the aperture here (indicating) and hides the top of the bolt.

Q Now, during the design and development of the pedestal shown on Defendant's Exhibit CM, what manufacturing techniques were considered by the Heywood-Wakefield Company to make this particular pedestal?

A Well --

MR. VAN DYKE: It is leading. I object. He hasn't established there were different techniques.

THE COURT: The objection is sustained.

Q Did Heywood-Wakefield Company consider more than one

manufacturing technique for the type of pedestal shown on Defendant's Exhibit CM?

A Yes.

Q And can you tell me what type of technique or types of techniques were considered by Heywood-Wakefield?

A Well, a tubular pedestal was considered, but because of the fact that it would have to have been stainless steel and the weight factor, it was thrown out.

Q When you say, "tubular type of pedestal," can you describe what you mean by that?

A Well, it would be fabricated from tubing, either square or round. I can't recall at the present time whether we went to either type or which type, but I believe -- I think we started with the square type and found that it was just too expensive and too weighty.

Q Can you explain the cost factor to me between a casting and a fabricated pedestal?

A Well, the cost factors -- and I am not a cost accountant or expert at that, but as far as I can see, with the volume involved, a casting pedestal would be cast with a match mold in aluminum, and we found it would be less costly and considerably less weighty and would accomplish exactly what we wanted, and

that is why we went to it.

MR. VAN DYKE: I move that the answer be stricken. The man testified he is not a cost expert, and yet he is giving an opinion as to cost factors.

THE COURT: The answer shall remain.

Q Were you aware of those cost considerations in your dealings as a representative of the Heywood-Wakefield Company?

A Yes.

Q What kind of projections was the Budd Company giving as to the type of volume that this seat would have for Plane-Mate lounges?

A Well, the Sales Department there did most of the --

MR. VAN DYKE: I object to the leading form of the questioning. There is no foundation.

THE COURT: The objection will be sustained.

Q Did the Budd Company provide any projections as to the number of pedestals that could be expected for this project in your relationships with them?

A They provided us with what they expected to sell in numbers of Plane-Mates.

Q And can you tell me what that was?

A Well, they told us to gear up for production for as many as six per week.

Q Six units per week?

A Six Plane-Mates. There are 30 pedestals for a Plane-Mate.

Q Did that factor have anything to do with what kind of manufacturing process was chosen?

A Yes.

Q And what did it have to do?

A For that reason we decided we would spend the money for the match metal molds.

Q I show you the bottom sketch on Defendant's Exhibit TA. Does that sketch accurately reflect the pedestal shown on Defendant's Exhibit CM?

A I believe so, yes.

Q Now, what use if any was made of the drawing, Defendant's Exhibit CM?

A I beg your pardon?

Q What use if any was made of the drawing, Defendant's Exhibit CM, by Heywood-Wakefield and/or Budd?

A Well, it was used to manufacture for the Plane-Mate.

Q And when did the manufacturing for the Plane-Mate begin with respect to the drawing, Defendant's Exhibit CM?

A The first production of the pedestals was the early part of 1969.

Q Were pedestals actually shipped to the Budd Company in 1969 for installation in a mobile lounge?

A Yes, sir.

Q And how do you happen to recall that pedestals were shipped in 1969 to the Budd Company for installation in a mobile lounge?

A Well, the Budd Company made an open house showing to the airports, port authorities, and aircraft manufacturers, as well as airplane companies, to view this vehicle at Port Washington, Pennsylvania, in November of 1969.

Q And how do you happen to recall that the open house was in November of 1969?

A Well, I have records of it in my expense accounts, that I attended it, and I have a note in my memo books that I was to attend it.

Q And do you recall actually attending that?

A Yes. As a matter of fact, the first date that they had set up for the open house was the early -- the first week in November, and when I got there they had to set it back a week.

Q And at that open house was this Plane-Mate seating

with the pedestals of the type shown on Defendant's Exhibit CM demonstrated?

A Yes, it was. It was a part of the vehicle.

Q And who attended that open house?

A Well, officials of port authorities and aircraft companies and airports and airplane companies.

Q Were the pedestals that were installed in that particular vehicle and shown in November of 1969 built and paid for to the best of your knowledge?

A As far as I am concerned, they were.

Q Would you refer to Defendant's Exhibit TI, please. Are you familiar with that document?

A Yes.

Q Can you tell me what it is, sir?

A It is a quotation to Bowden McLaughlin York Company on seating for this Plane-Mate. They were bidding to manufacture the Plane-Mate for the Budd Company.

Q Would those have been for the showing in November of 1969, or for something else?

A No. This was for the production models.

Q And were the pedestals of the type shown in Defendant's Exhibit CM on sale for production purposes as of --

A Yes; they were.

Q And what is the date of this letter?
A August 4, 1969.
Q And those pedestals that were quoted in the letter of August 4, 1969, would be pedestals of the type shown in Defendant's Exhibit TA and Defendant's Exhibit CM?
A CM, yes.
Q What was done with this mobile lounge that was shown in Philadelphia in November of 1969, to your knowledge?
A It was sent to the Kennedy Airport to facilitate the handling of the foreign aircraft at the international end of the airport, and as far as I know it was there for about three years, until they got their own -- I think they bought in the neighborhood of 20 some Plane-Mates.
Q I also refer you to Defendant's Exhibit TJ and Defendant's Exhibit TK. Can you tell me what those are, sir?

MR. HENEVELD: May I have that again, Mr. Lyon?

MR. LYON: TK and TJ.

A TJ is a letter from Mr. Labaree, who was the engineer in charge of the project of the Budd Company, to the Heywood-Wakefield Company, advising them of modifications that had to be made and changes in color schemes,

and so forth, and also the fact that they needed some sets of drawings.
Q And how about TK; can you just briefly tell me what that is?
A Well, that is a letter written to me from the manufacturer of the Heywood-Wakefield Company, really, advising me that they had received an order for 10 sets of the Plane-Mate seats.
Q What do these two documents relate to, TJ and TK?
A Exactly the same seating, the same pedestals.
Q As relates to subsequent sales by --
A Absolutely the same.
Q I refer you to Defendant's Exhibit CL. Can you tell me what that is?
A Well, that is a brochure that the Budd Company puts out for this particular prototype that I referred to previously, and that is -- that was put out to attempt to sell the vehicle.
Q Do you have any knowledge as to when this particular brochure was put out?
A No, I don't, definitely.
Q Are the seats that are shown in this brochure the Plane-Mate seats with the pedestal that we have been discussing in this context of the exhibits identified

through you?

A Yes; they are.

Q I refer you to the seventh page of that brochure. Does this show the general seating pattern used?

A Yes. It gives you the one side of the vehicle.

Q And does it show the pedestal in use of the type shown on Defendant's Exhibit TA?

A Yes, it does.

MR. LYON: May I have just a moment, your Honor?

THE COURT: Yes.

(After an interval.)

MR. LYON: I have no further questions.

I would like to offer Defendant's Exhibit DT.

THE COURT: Excuse me just a minute. DT shall be received.

MR. LYON: DU.

THE COURT: DU shall be received.

MR. LYON: RX.

MR. HENEVELD: Name those again, please.

MR. LYON: RX.

MR. HENEVELD: And what else?

AMERICAN SEATING COMPANY V.
NATIONAL SEATING COMPANY

CIVIL ACTION NO. C75-63-A

DEFENDANT'S EXHIBIT CL

The Magic

64

500?4?

THE PASSENGER CABIN of Plane-Mate is designed to handle up to 150 passengers. Seats are extra-wide and passengers may stow carry-on luggage under each seat. For standees, a bar extends the length of the cabin on either aisle. The cabin is climate-controlled for year-round passenger comfort, floors are carpeted and surfaces are of high impact-resistant plastic for rugged wear and ease of maintenance. Interiors are designed to the specifications of each airline.

322 anything of that nature. This is the art of making a seat. This is usually the way a seat is made.

I think anyone that knows will immediately know how this is made. That teaches it.

Q So what you are saying is that tubes are equivalent to channels are equivalent to I-beams are equivalent to H-beams? You just do a little experimenting and you make them all do the same thing?

A Yes. You vary the selections by selecting the proper wall section or section modulus, which can be calculated, and you can utilize various sections.

Q What is the construction of the seats, 11 and 12?

A In this case it is a plastic shell.

Q And all it shows is the style of the shell? It doesn't give any details, does it?

A No; but it refers to it as part of the seat structure, because again this can be varied.

Q That shell wasn't even designed by you, was it?

A It wasn't designed by me. It was designed by someone else, but I designed the configuration.

Q All that is shown is the styling?

A No. It shows the configuration. It is a bucket seat with flanges, and it shows the ribs on the back of it, how the bucket can be made.

CLAIMS

1. A single pedestal transit chair adapted to be secured to the floor and side wall of a vehicle, comprising a cross beam, a rail carried by said cross beam for attachment to a vehicle side wall, a pair of seats mounted upon said bottom in side-by-side relation, a pedestal extending downwardly from a mid-portion of said beam and provided at its bottom with a hollow elongated foot extending in a direction longitudinally of said vehicle chair, and means for securing said foot to said vehicle floor.

2. The structure of claim 1 in which said hollow foot has bolt openings at its bottom ends and has its upper end portions cut away at an angle to provide vertical access to said bottom bolt openings.

3. The structure of claim 2 in which said hollow foot is provided with side openings near its ends and an end closure is equipped with inwardly-extending spring wings equipped with outwardly-extending rivet lugs engageable with said side openings.

4. In combination with the floor of a vehicle, a chair having a pedestal equipped with an elongated hollow foot having its bottom ends provided with bolt openings, bolts extending through said openings to anchor said foot bottom to said floor, said foot being cut away at its upper end portions to provide vertical access with a socket wrench to said bolts, and closure means for said foot ends.

5. The structure of claim 4 in which said upper foot ends are cut away at an inclination of about 45°.

6. The structure of claim 4 in which said foot openings are releasably closed by end caps.

makes home furnishings, which is dinette furniture, they make auditorium seating, they make commercial seating.

"Q What do you mean by commercial seating?

"A The type of thing you're sitting in right now, office chairs, that type of thing. They make carrels for commercial, for university usage. They make tables for both the home furnishing and for commercial usage, such as the one we are sitting at. Then we are involved in a lot of special items for the Government, GSA, such as wardrobes, special tables, special chairs, that type of thing. That is basically what the Howell St. Charles operation is performing."

MR. LYON: Page 15:

"Q Referring now to Defendant's Exhibit MB, could you identify that for me, please?

"A Basically this is a drawing of an anchoring base that we are presently manufacturing, and have manufactured since 1963, for what we term as our sequence seating series.

"This drawing happens to be a permanent installation type of base in that it is bolted

directly to the floor. It has a modified tubular horizontal base section and vertical base section with an attachment on top for mounting it to a central spline which the seats are attached to to form the entire sequence seating group.

"Q What is the drawing number on MB?

"A B-317.

"Q And what is the date of the drawing, Defendant's Exhibit MB?

"A 11-1-63.

"Q Are you familiar with the structure disclosed and illustrated on the drawing, Defendant's Exhibit MB?

"A Yes, I am.

"Q Referring to the drawing, Defendant's Exhibit MB, could you identify what member there forms the upright portion you just mentioned?

"A This is the rectangular tubing, which is termed the pedestal leg, three quarters by an inch and a half 16 gauge cold rolled steel.

"Q Could you put a letter 'A' on the upright member you have just described?

"Would you draw a lead line?

"Q Would you identify the inverted channel with the letter F, please?

"And can you show generally where the resistance welding to the inverted channel would be by the letter G?

"A It is an interrupted weld that goes the full length of the major leg channel, and it is shown as Section G; it is shown as a solid line between the inverted channel and the major base channel.

"Q Is there another channel member in the Section AA?

"A Yes, there is. That is a solid upright channel in that it forms the solid base for the entire leg assembly when it is all assembled.

"Q Would you identify that, please, with the letter H?

"And what is the purpose of the channel identified by the letter H?

"A To give you solid contact with the floor and distribute the entire load over a larger area. The entire assembly form is then a modified closed tube.

"Q Referring to the side elevation of the pedestal, could you briefly describe how that pedestal is secured to the floor?

"A In this specific instance this one has two 5/16 18 bolts that insert through the leg channel into accepting Ackerman-Johnson inserts that have been pre-installed into a concrete floor.

"The leg itself is positioned over the top of the Ackerman-Johnson inserts. A bolt is assembled through the base leg into the Ackerman-Johnson and tightened, forming a solid base assembly to the floor."

MR. LYON: Page 21:

"Q Does the bolt identified with the letter J actually pass through any aperture in the pedestal foot D?

"A Yes, they do.

"Q And where are those apertures located?

"A They are coincidental with the Ackerman-Johnson location.

"Q Where are they positioned structurally in the foot?

"A One fore and aft of the pedestal column.

"Q And what members do the apertures actually go through in the foot identified by the letter D?

"A They go through the sub-letter E, the sub-letter G, and the sub-letter -- as you were -- the sub-letter G was a weld. They go through the sub-letter E, sub-letter F, and sub-letter H.

"Q What kind of a design is used for the front and rear ends of the pedestal, letter D, shown on Defendant's Exhibit NB?

"A All it is is a closed formed sheet metal section that has been formed up, closed in a die, and then welded shut so that you in fact have a completely integral foot giving you a tubular section appearance."

MR. LYON: Page 22:

"Q I show you what has been marked as Defendant's Exhibit NC. Can you identify what that is for me, please?

"A That is an installation, a picture of an installation that we made at the Church of

the Brethren in Eastern New Jersey, showing the application of the subject base mounted directly to the spline, and the seats in turn mounted to the spline, completing the sequence group.

"Q Do you recall approximately when the job pictured in Defendant's Exhibit NC was done?

"A Somewhere in the neighborhood of 1964 or '65. I can't definitely point it any closer than that.

"Q Referring to the catalogue, is there any way to tell when this catalogue was published?

"A On each catalogue we prepare we have a copyright date. The copyright date of this catalogue, which is catalogue No. 34, is 1966.

"Q Is the picture that is shown on Defendant's Exhibit NC also in the catalogue, Defendant's Exhibit NF?

"A Yes, it is.

"Q Are you referring to a particular page in that catalogue?

"A It is on page 34. It is not marked as such, but it is on the front of page 33."

has concealed fasteners. The same is true with the 245 chair, on page 19, has concealed fasteners. The space saving chair, the 130, on page 20, has concealed fasteners."

MR. LYON: Page 40:

"Q If, from an aesthetical standpoint, you had wanted to conceal the fasteners shown in Defendant's Exhibits NB and NC, in your opinion could you have concealed it in the 1963 era?

"Mr. Van Dyke: Could I hear the question, please?

"(Question read by reporter.)

"I guess I object to the question. It is purely hypothetical.

"A Using the design as shown in drawing B-317, which is your Exhibit NB, we probably would not have used that specific design.

"We would probably have used a rectangular tube in that we would have sheared both ends on an angle to accommodate a pierced hole inside of it, taking a bolt, run it through the exposed section, and then capped the ends.

"Q Do you believe it would have been within the engineering expertise of the Howell

Company in 1963 to make the type of structure that you have just described?

"A No doubt about it.

"Q Did you have other pedestal type of members that used a tubular foot from end to end?

"A Yes, we did.

"Q I refer you to Defendant's Exhibit NG, could you describe that for me, please?

"A This drawing is a drawing of a table base that has been used since 1962, which is a rectangular tubular section that is coincident with the floor, and then has two other rectangular tubular sections arising vertically from that. The base tube is sheared, flapped on either end, giving us the aesthetic appearance of a truncated cone closed on both ends."

THE COURT: Let the record show the Court overrules the objection of the plaintiffs to the questions on page 40.

MR. LYON: Page 45:

"Q Have the pedestals shown in Exhibits NB through NJ been the standard of the Howell Company with respect to this type of furniture since approximately 1962?